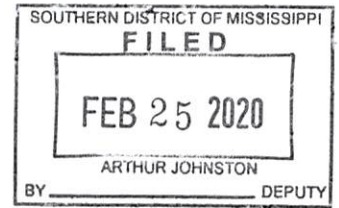


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION



AMGUARD INSURANCE COMPANY

PLAINTIFF

vs.

CIVIL ACTION NO.: 3:20-CV-106-HTW-LGI

SOUTHGROUP INSURANCE AND
FINANCIAL SERVICES, LLC

DEFENDANT

COMPLAINT

COMES NOW, AmGuard Insurance Group, Inc., Plaintiff, by and through counsel, and files this, its Complaint against SouthGroup Insurance and Financial Services, LLC, and in support thereof would show unto the Court the following:

I. PARTIES

1. Plaintiff, AmGuard Insurance Company (hereinafter "AmGuard") is a Delaware corporation, having its principal place of business in Wilkes-Barre, Pennsylvania. At all times relevant hereto, AmGuard was, and still remains, licensed to sell insurance in Mississippi.

2. Defendant, SouthGroup Insurance and Financial Services, LLC (hereinafter "SouthGroup"), is a Mississippi Limited Liability Company authorized through and in good standing with the Mississippi Secretary of State, doing business in the State of Mississippi, which may be served with process through its registered agent for service of process, Ronald P. Tubertini, 795 Woodlands Parkway, Suite 101, Ridgeland, Mississippi, 39157.

II. JURISDICTION AND VENUE

3. The amount in controversy exceeds \$75,000.00.

4. Jurisdiction and venue are proper in this court pursuant to 32 U.S.C. § 1332 and 28 U.S.C. § 1391.

III. FACTS

5. On or about April 1, 2009, SouthGroup and AmGuard entered into an Agency-Brokerage Agreement (hereinafter “the Agreement”) whereby SouthGroup would act as an independent insurance broker for Guard in Mississippi. (See, Exhibit “1”).

6. Under the terms of the Agreement, SouthGroup agreed to hold harmless, defend and indemnify AmGuard against all losses, costs and expenses incurred by AmGuard as a result of any error, omission or intentional act of SouthGroup, or anyone acting on behalf of SouthGroup, or resulting from SouthGroup’s failure to perform within the authorized scope of the Agreement. (See, Exhibit “1”, ¶ 17).

7. In furtherance of its duties pursuant to the Agreement, SouthGroup placed an AmGuard workers’ compensation insurance policy for its clients, Energy Piping , Inc. and Energy Piping of WV, Inc. (hereinafter “Energy Piping”)

8. On or before January 1, 2016, due to an unintentional system error, and unbeknownst to AmGuard, Energy Piping of W.V., Inc.’s initial premium payment for coverage from 1-1-2016 through 1-1-2017 failed to auto-draft, resulting in Energy Piping’s workers’ compensation insurance policy failing to renew.

9. On or about March 17, 2016, after discussions between SouthGroup and AmGuard as to Energy Piping’s policy not renewing, AmGuard informed SouthGroup that the policy could be issued back to January 1, 2016 upon the receipt of necessary information and the payment of premiums for the subject period.

10. Subsequently, SouthGroup failed to inform Energy Piping that the policy could be renewed back to the original effective date of coverage of 1-1-2016 and wholly failed to take any steps whatsoever to ensure the policy coverage was corrected and in effect.

11. As a result of the acts and/or omissions of SouthGroup, Energy Piping was left without coverage for a subsequent workers' compensation claim occurring in July of 2016.

12. Energy Piping, Inc. and Energy Piping of W.V. Inc., have brought an action against AmGuard to recover damages incurred from not having the aforementioned insurance coverage styled *Energy Piping, Inc. and Energy Piping of W.V., Inc., In the United States District Court for the Southern District of Mississippi, Northern Division, Civil Action No.: 3:18-cv-819*. AmGuard has requested SouthGroup to honor its contractual obligations of defense and indemnity to it, pursuant to the Agreement, but as of this date, SouthGroup has refused.

IV. COUNT 1: BREACH OF CONTRACT

13. The allegations of Paragraphs 1 through 12 of the Complaint are incorporated by reference herein.

14. SouthGroup entered into the Agreement with AmGuard wherein it agreed to act as an independent broker for AmGuard in Mississippi.

15. SouthGroup subsequently entered into an agreement with Energy Piping whereby SouthGroup would act as a broker for Energy Piping to obtain insurance coverage(s) from AmGuard.

16. Energy Piping has alleged that AmGuard breached its contractual duties to provide it with workers' compensation coverage.

17. AmGuard alleges that it was the acts and/or omissions of SouthGroup, in breach of the Agreement with AmGuard, that resulted in Energy Piping being left without workers' compensation insurance coverage.

18. As a direct and proximate result of the claims asserted against AmGuard by Energy Piping, which arose from the acts and/or omissions of SouthGroup, AmGuard has been and will be damaged.

19. AmGuard demands judgement against SouthGroup for any amount AmGuard is required to pay Energy Piping that is in any way related to the acts and/or omissions of SouthGroup in the non-renewal of Energy Piping's workers' compensation policy, as well as reimbursement of AmGuard's attorney's fees, costs and litigation expenses as contemplated by the Agreement.

V. COUNT 2: CONTRACTUAL INDEMNITY

20. The allegations of Paragraphs 1 through 20 of the Complaint are incorporated by reference herein.

21. Under the terms of the Agreement, SouthGroup is required to defend, indemnify and hold harmless AmGuard from all of Energy Piping's claims in any way related to SouthGroup's own negligence, including attorney's fees, costs and litigation expenses.

22. The claims by Energy Piping against AmGuard are the result of SouthGroup's own acts and/or omissions.

23. SouthGroup has refused to defend, indemnify and hold AmGuard harmless as is required by the Agreement.

24. AmGuard demands judgment against SouthGroup for any amount AmGuard is required to pay to Energy Piping as a result of SouthGroup's acts and/or omissions, including attorney's fees, costs and litigation expenses.

WHEREFORE, AmGuard respectfully requests this Honorable Court:

(1) Enter an Order requiring SouthGroup to fully defend AmGuard in the action brought against it by Energy Piping; and

(2) Enter an Order requiring SouthGroup to fully indemnify AmGuard for all sums it must pay to Energy Piping, whether by Order of Court, judgment or by settlement, in any way related to SouthGroup's negligence in failing to secure Energy Piping's workers' compensation policy for the coverage period 1-1-2016 to 1-1-2017, as well as for all attorney's fees, costs and litigations expenses AmGuard incurs defending against Energy Piping's claims in any way related to SouthGroup's negligence; and

(4) Award AmGuard any additional relief to which it may be entitled.

RESPECTFULLY SUBMITTED, this the 25th day of February, 2020.

AmGuard Insurance Company,
PLAINTIFF

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Attorneys

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